



FR-4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. EP 682 (Sub-No. 3)]

2011 Tax Information For Use In The Revenue Shortfall Allocation Method

AGENCY: Surface Transportation Board.

ACTION: Notice.

SUMMARY: The Board is publishing, and providing the public an opportunity to comment on, the 2011 weighted average state tax rates for each Class I railroad, as calculated by the Association of American Railroads (AAR), for use in the Revenue Shortfall Allocation Method (RSAM).

DATES: Comments are due by July 9, 2012. If any comment opposing AAR's calculation is filed, AAR's reply will be due by July 30, 2012. If no comments are filed by the due date, AAR's calculation of the 2011 weighted average state tax rates will be automatically adopted by the Board, effective July 10, 2012.

ADDRESSES: Comments may be submitted either via the Board's e-filing format or in traditional paper format. Any person using e-filing should attach a document and otherwise comply with the instructions at the E-FILING link on the Board's Web site at <http://www.stb.dot.gov>. Any person submitting a filing in the traditional paper format should send an original and 10 copies referring to Docket No. EP 682 (Sub-No. 3) to: Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001.

FOR FURTHER INFORMATION CONTACT: Jonathon Binet, (202) 245-0368.

Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at (800) 877-8339.

SUPPLEMENTARY INFORMATION: The RSAM figure is one of three benchmarks that together are used to determine the reasonableness of a challenged rate under the Board's Simplified Standards for Rail Rate Cases, EP 646 (Sub-No. 1) (STB served Sept. 5, 2007),¹ as further revised in Simplified Standards for Rail Rate Cases—Taxes in Revenue Shortfall Allocation Method, EP 646 (Sub-No. 2) (STB served Nov. 21, 2008).

RSAM is intended to measure the average markup that the railroad would need to collect from all of its “potentially captive traffic” (traffic with a revenue-to-variable-cost ratio above 180%) to earn adequate revenues as measured by the Board under 49 U.S.C. 10704(a)(2) (i.e., earn a return on investment equal to the railroad industry cost of capital). Simplified Standards—Taxes in RSAM, slip op. at 1. In Simplified Standards—Taxes in RSAM, slip op. at 3, 5, the Board modified its RSAM formula to account for taxes, as the prior formula mistakenly compared pre-tax and after-tax revenues. In that decision, the Board stated that it would institute a separate proceeding in which Class I railroads would be required to submit the annual tax information necessary for the Board's annual RSAM calculation. Id. at 5-6.

In Annual Submission of Tax Information for Use in the Revenue Shortfall Allocation Method, EP 682 (STB served Feb. 26, 2010), the Board adopted rules to

¹ Aff'd sub nom. CSX Transp., Inc. v. STB, 568 F.3d 236 (D.C. Cir. 2009), and vacated in part on reh'g, CSX Transp., Inc. v. STB, 584 F.3d 1076 (D.C. Cir. 2009).

require AAR – a national trade association – to annually calculate and submit to the Board the weighted average state tax rate for each Class I railroad. See 49 CFR 1135.2(a). On May 30, 2012, AAR filed its calculation of the weighted average state tax rates for 2011, listed below for each Class I railroad:

WEIGHTED AVERAGE STATE TAX RATES

[In percent]

| Railroad | 2011 | 2010 | % Change |
|----------------------------------|-------------|-------------|-----------------|
| BNSF Railway Company | 5.584% | 5.572% | 0.012% |
| CSX Transportation, Inc. | 5.660% | 5.575% | 0.085% |
| Grand Trunk Corporation | 8.089% | 7.634% | 0.455% |
| The Kansas City Southern Railway | 6.139% | 6.070% | 0.069% |
| Norfolk Southern Combined | 5.942% | 5.819% | 0.123% |
| Soo Line Corporation | 7.350% | 7.305% | 0.045% |
| Union Pacific Railroad Company | 6.035% | 5.922% | 0.113% |

Any party wishing to comment on AAR’s calculation of the 2011 weighted average state tax rates should file a comment by July 9, 2012. See 49 CFR 1135.2(c). If any comment opposing AAR’s calculations is filed, AAR’s reply will be due by July 30, 2012. Id. If any comments are filed, the Board will review AAR’s submission, together with the comments, and serve a decision within 60 days of the close of the record that either accepts, rejects, or modifies AAR’s railroad-specific tax information. Id. If no

comments are filed by July 9, 2012, AAR's submitted weighted average state tax rates will be automatically adopted by the Board, effective July 10, 2012. Id.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Decided: June 5, 2012.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Jeffrey Herzig

Clearance Clerk

[FR Doc. 2012-13962 Filed 06/07/2012 at 8:45 am; Publication Date: 06/08/2012]